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An Introduction to Canadian Drug and Alcohol Law for Educators

by Robert Solomon and Sydney J. Usprich



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Introduction

Patterns of substance use—whether they involve cigarettes, alcohol, marijuana, or heroin—are usually established when people are in their teens. The decisions that young people make about alcohol and drug use have important safety, health, educational, and legal consequences. Thus, of the many laws that affect teenagers, we believe that alcohol and drug laws are among the most critical.

The adverse effects of alcohol and drug use on young people cannot be over-emphasized. For example, those between the ages of 16 and 24 are dramatically over-represented in the statistics for alcohol-related accidental deaths and injuries.¹ Further, the approximately 700,000 charges for cannabis offences since the mid-1960s have primarily involved those in their teens and early 20s.² Although the overwhelming majority of these offences are for cannabis possession, for which first offenders are rarely sentenced to jail,³ they do acquire a federal criminal record. Finally, despite decreases in tobacco consumption during the last twenty years, about 40% of smokers began smoking daily before they reached 17 and 25% of children are dependent on nicotine when they enter adulthood.⁴

The school system has a vital role to play in encouraging young people to make responsible decisions about alcohol and drug use. Early in 1988, the Addiction Research Foundation launched a program to assist educators in fulfilling this role. As part of its program, the Foundation published two documents. The first, *Alcohol and Drug Policies: A Guide for School Boards*,⁵ discusses patterns of student alcohol and drug use and the

components of a comprehensive school response. It also contains a set of model school policies, and explains how school boards can use the policies to develop their own alcohol and drug program. The second document, *The Legal Rights, Powers, and Obligations of Educators Regarding Student Alcohol and Drug Use*,⁶ analyses the legal issues that may arise in implementing a comprehensive alcohol and drug program.

It is also important, however, for educators to have some understanding of the Canadian alcohol and drug laws that underpin these policies and programs. While the legislation is obviously relevant to disciplinary issues, it also has broader implications. For example, in deciding whether to permit students to smoke on school property, a Board should realize that it is a federal offence for those under 16 even to possess tobacco products. Similarly, a Board should appreciate that school personnel cannot lawfully return confiscated alcohol to a student under 19.

An understanding of the law will also assist in formulating policies concerning both the educational and treatment aspects of a comprehensive substance abuse program. For example, while few drinking and driving offences are committed on school grounds, a school's educational component should warn students of the legal, as well as the safety, risks of drinking and driving. Accordingly, the purpose of this document is to provide educators with a basic knowledge of the relevant federal and provincial laws.

Canadian alcohol and drug laws encompass a broad range of complex legislation. We have focused on those provisions that are most relevant to

"The school system has a vital role to play in encouraging young people to make responsible decisions about alcohol and drug use."

young people and to the school system's role in formulating alcohol and drug policies. Many procedural and technical issues have been omitted, and the impact of the Canadian Charter of Rights and Freedoms⁷ is only briefly mentioned. With few exceptions, Canadian alcohol and drug laws may be characterized as providing broad prohibitions, sweeping enforcement powers, and potentially severe penalties. Any brief analysis of the legislation will not necessarily reflect local enforcement, prosecutorial, or sentencing practices. As we shall discuss, the exercise of discretion plays a major role in determining the effects of these laws.

1 Federal Drug Law

(a) Introduction

There are two major federal statutes in Canada dealing specifically with illegal drugs—the Narcotic Control Act (NCA)⁸ and the Food and Drugs Act (FDA).⁹ Each Act sets out offences and penalties, and each contains special police powers of entry, search, seizure, and forfeiture. The Criminal Code¹⁰ provisions concerning police powers of arrest, as well as the Code's other procedural rules, apply to the offences created by the NCA and FDA.¹¹

(b) The Narcotic Control Act

Until the mid-1960s, there were rarely more than several hundred drug convictions a year, and the vast majority involved heroin and other opiates.¹² With rising drug use in the late 1960s, the number of NCA convictions spiralled, peaking at over 46,000 in 1981.¹³ From 1969 to 1984, cannabis accounted for over 90% of the total annual NCA convictions.¹⁴ The overwhelming majority of these cannabis cases have involved young people convicted of possessing small quantities of the drug.¹⁵

The NCA contains six common offences: possession, trafficking, possession for the purpose of trafficking, cultivation of opium or cannabis, importing or exporting, and "prescription shopping". These offences apply to the over 100 substances that are listed in a Schedule to the Act.¹⁶ Except for the offence of cultivation, the Act does not distinguish among the drugs in the Schedule. For example, both cannabis and heroin offenders are subject to the same police enforcement powers, fingerprinting and photographing procedures, penalty provisions, and criminal record consequences.

*Possession:*¹⁷ The NCA adopts the Criminal Code's broad definition of the term "possession."¹⁸ In order to be convicted of possession, a person must know what the substance is and have some control over it.¹⁹ Possession of any amount of a narcotic is unlawful, and a person may be convicted of possession even if the police seize only a very small quantity of the drug. Consequently, ashes from a joint, scrapings from a hash pipe, or droplets from a syringe may be sufficient to support a possession conviction.²⁰

Possession convictions may result from three types of situations. The simplest cases involve narcotics that are found in the suspect's physical possession, as would be the case if the police caught a suspect smoking a "joint". The physical contact with the narcotic or its container need only be brief.²¹ However, the prosecutor must establish that the suspect knew what the drug was and willingly took possession of it.

Second, a person can be convicted of "possession" without having physical possession of the drug, provided he or she exercises legal control over it.²² This can occur in several different ways. For example, a male student could have his girlfriend carry his marijuana in her purse. He could be convicted of possession because he "has it in the actual possession or custody of another person."²³ If the girlfriend knows that she is holding a drug, she also could be convicted, because she has actual physical possession of it. Similarly, a female student could be convicted if she hid some marijuana in a knapsack stored in her boyfriend's locker. Here neither of them physically possesses the drug. However, the female could be convicted of

"...cannabis and heroin offenders are subject to the same police enforcement powers, fingerprinting and photographing procedures, penalty provisions, and criminal record consequences."

possession because she had stored the drug for her "use or benefit."²⁴

Third, drugs found in the possession of one member of a group are also considered to be in the possession of the others in the group, if they know that the member is in possession, consent to it, and have some control over the situation.²⁵ However, a person could not be convicted for simply attending a party at which other people were smoking marijuana.²⁶ The individual may have known of the possession, but this does not mean that he or she consented to it or had the power to control the situation. The result might be different if a student permits his girlfriend to smoke a joint while they are sitting in his car in the school parking lot. It could be argued that as the owner of the car, he has the right to control what happens in it. His failure to protest or attempt to stop her might indicate that he consented to the illegal act.

*Trafficking:*²⁷ The NCA broadly defines the offence of trafficking to mean: manufacture, sell, give, administer, transport, send, deliver, or distribute a narcotic.²⁸ Offering to do any of these acts also constitutes trafficking, even if the suspect had no intention or ability to fulfil the commitment.²⁹ No exchange of money is necessary. Consequently, a student who takes a joint to school to share with a friend may be convicted of trafficking on the basis of transporting the drug.³⁰ As well, the act of sharing a joint would constitute trafficking for giving or distributing the drug. Finally, a person who represents a substance as a narcotic may be convicted of trafficking for selling the substance, even though it is not actually a narcotic.

*Possession for the Purpose of Trafficking:*³¹ Possession of a narcotic for the purpose of doing any of the previously mentioned acts constitutes possession for the purpose of trafficking. To obtain a conviction for this offence, the prosecutor must prove that the accused possessed the narcotic for the purpose of trafficking. This purpose can be established in vari-

ous ways. For example, the prosecutor could use the fact that an accused had a quantity of narcotics larger than would be consistent with personal use.³² Alternatively, even if the accused had only a small quantity of drugs, there may be other evidence of the intent to traffic, such as scales, bags, lists of names, associations with drug traffickers, a large quantity of small bills, a large amount of cash, and the accused's incriminating statements.³³

*Cultivation:*³⁴ Unless authorized by the government, it is an offence to cultivate any quantity of opium or cannabis. A person who grows two plants for personal use and a large-scale trafficker who grows hectares of cannabis can both be convicted of cultivation. The prosecutor must establish that the accused knew what the plant was and assisted in its growth. Possession of cannabis seeds does not constitute cultivation, but planting, hoeing, weeding, watering, fertilizing, or processing the plants does.³⁵

*Importing or Exporting:*³⁶ A person may be charged with this offence for transporting, or arranging to transport, any quantity of a narcotic across a Canadian border. The fact that the drugs were intended solely for personal use, that the quantity involved was small, or that the suspect was unaware of the seriousness of the crime, is no defence.³⁷ The prosecutor need only prove that the suspect knew what the substance was and intentionally took it across the border. Thus, a student who takes a joint across the border while on a school trip commits the offence of exporting a narcotic.

*Prescription Shopping:*³⁸ This relatively new offence is also commonly referred to as "double doctoring." The offence consists of getting, or attempting to get, a prescription for a narcotic from a doctor without disclosing that a similar prescription was obtained from another doctor within the previous 30 days.

Penalties: As the following chart illustrates, all of the NCA offences carry potentially severe sentences. It must also

"A person who grows two plants for personal use and a large-scale trafficker who grows hectares of cannabis can both be convicted of cultivation."

be emphasized that regardless of the sentence imposed, a person who is found guilty of any violation of the NCA acquires a federal criminal record.

(c) The Food and Drugs Act

Most of the Act is concerned with ensuring that foods, cosmetics, medicines, and medical devices are safe for consumption or use, and are honestly advertised. The two parts of the Act dealing with the non-medical use of drugs were added in the 1960s in response to the increased use of LSD (lysergic acid diethylamide), amphetamines, barbiturates, and other drugs. These added parts, Part III and Part IV, create various offences for certain drugs classified as either "controlled" or "restricted."

"Controlled Drugs": Part III of the FDA governs "controlled drugs," which are listed in Schedule G. In addition to amphetamines and barbiturates, this Schedule contains about a dozen less commonly used stimulants and depressants. The key factor in classifying a substance as a Schedule G drug appears to be that it has both medical and non-medical uses.

Part III contains three common offences for Schedule G drugs—trafficking, possession³⁹ for the purpose of trafficking,⁴⁰ and prescription shopping.⁴¹ Simple possession of a controlled drug is not an offence. Importing and exporting are not separate offences, but rather are included in the definition of trafficking.⁴² In other respects, the FDA definition of

The Narcotic Control Act: Offences, Definitions, and Penalties

| OFFENCE | DEFINITIONS | MAXIMUM PENALTY |
|---|--|---|
| Possession | <ul style="list-style-type: none"> — to knowingly have a narcotic on your person — to knowingly control a narcotic in another place or within another person's possession — knowledge, consent, and some control over a narcotic in the possession of a fellow group member | Summary conviction <ul style="list-style-type: none"> — First offence: 6 months & \$1,000 fine — Subsequent offence: 1 year and \$2,000 fine Indictment <ul style="list-style-type: none"> — 7 years |
| Trafficking | <ul style="list-style-type: none"> — to manufacture, sell, give, administer, transport, send, deliver, or distribute any narcotic or substance held out to be a narcotic — to offer to do any of these things | Indictment <ul style="list-style-type: none"> — life |
| Possession for the purpose of trafficking | <ul style="list-style-type: none"> — to possess any narcotic for the above-mentioned purposes | Indictment <ul style="list-style-type: none"> — life |
| Cultivation | <ul style="list-style-type: none"> — to knowingly grow or assist the growth of opium or cannabis | Indictment <ul style="list-style-type: none"> — 7 years |
| Importing or exporting | <ul style="list-style-type: none"> — to knowingly transport or arrange for the transport of any narcotic across the Canadian border | Indictment <ul style="list-style-type: none"> — life |
| Prescription shopping | <ul style="list-style-type: none"> — to obtain or attempt to obtain a narcotic from one doctor, without disclosing a prescription for a narcotic obtained from another doctor within the previous 30 days | Summary conviction <ul style="list-style-type: none"> — First offence: 6 months & \$1,000 fine — Subsequent offence: 1 year and \$2,000 fine Indictment <ul style="list-style-type: none"> — 7 years |

trafficking is narrower than the NCA definition, because it does not include giving, administering, or sending a drug.

"Restricted Drugs": Part IV governs "restricted drugs," which are listed in Schedule H. Psilocybin, LSD, and dimethyltryptamine (DMT) are the most commonly used of the approximately 25 drugs in the Schedule. Unlike controlled drugs, restricted drugs are not generally used for medical purposes.

There are three offences for restricted drugs—possession,⁴³ trafficking,⁴⁴ and possession for the purpose of trafficking.⁴⁵

This part of the FDA also adopts the Criminal Code's broad definition of possession, discussed earlier. The definitions of trafficking and possession for the purpose of trafficking are the same for both controlled and restricted drugs.

Penalties: As the following chart illustrates, the maximum penalties under the FDA are considerably lower than those in the NCA. Contrary to some media accounts, a person who is found guilty of any FDA offence acquires a federal criminal record.

The Food and Drug Act: Classifications, Offences, Definitions, and Penalties

| CLASSIFICATIONS | DRUGS IN CLASSIFICATION | OFFENCES AND DEFINITIONS | MAXIMUM PENALTY |
|---|--|---|--|
| Part III Controlled drugs: Schedule G | amphetamines barbiturates (other stimulants and depressants) | Trafficking — to manufacture, sell, export, import, transport, or deliver any Schedule G drug or any substance held out to be a Schedule G drug Possession for the purpose of trafficking — to possess any Schedule G drug for the above-mentioned purposes | Summary conviction — 18 months Indictment — 10 years |
| | | Prescription shopping — to obtain or attempt to obtain a Schedule G drug from one doctor without disclosing a prescription for a Schedule G drug obtained from another doctor within the previous 30 days | Summary conviction — First offence: 6 months or \$1,000 fine — Subsequent offence: 1 year or \$2,000 fine Indictment — 3 years or \$5,000 fine |
| Part IV Restricted drugs: Schedule H | LSD MDA psilocybin (other hallucinogens) | Possession — to knowingly have a Schedule G drug on your person — to knowingly control a Schedule H drug in another place or within another person's possession — knowledge, consent, and some control over a Schedule H drug in the possession of a fellow group member | Summary conviction — First offence: 6 months or \$1,000 fine — Subsequent offence: 1 year & \$2,000 fine Indictment — 3 years & \$5,000 fine |
| | | Trafficking — see definition above Possession for the purpose of trafficking — see definition above | Summary conviction — 18 months Indictment — 10 years |
| Prescription drugs | antibiotics tranquillizers birth control pills painkillers (many other prescription drugs) | Selling — unauthorized sale of a prescription drug without the appropriate verbal or written prescription | Summary conviction — First offence: 3 months & \$500 fine — Subsequent offence: 6 months & \$1,000 fine Indictment — 3 years & \$5,000 fine |

(d) Drug Paraphernalia and Drug Literature

Recent amendments to the Criminal Code make it an offence to knowingly import, export, manufacture, promote, or sell "instruments or literature for illicit drug use."⁴⁶ An "illicit drug" means any substance that is prohibited by the NCA or Parts III or IV of the FDA.⁴⁷ Thus, the term includes the standard illicit substances, such as marijuana, heroin, cocaine, crack, LSD, and amphetamines. "Instrument for illicit drug use" means anything designed or intended to facilitate the consumption of illicit drugs, but does not include items for medical use, such as needles and syringes.⁴⁸ "Literature for illicit drug use" means any printed matter or video that describes and is intended to "promote, encourage, or advocate" the consumption of illicit drugs.⁴⁹

Parliament created this offence primarily because of concerns that the "wrong message" was being sent to young people by magazines glamorizing drug use and by shops openly selling drug paraphernalia, such as roach clips, coke spoons, and bong pipes. It is questionable whether the legislation will have any significant impact. There are several major technical problems with the legislation,⁵⁰ and the literature restrictions may be challenged for violating the Charter right to "freedom of expression."⁵¹ It should be noted that it is not an offence under these Code provisions to buy or possess (unless the possession is for purposes of sale) drug paraphernalia or drug literature.

(e) Police Powers, Seizure, and Forfeiture

There are broader powers of entry, search, and seizure in even a minor drug case than in a murder or other serious criminal investigation.⁵² Both the NCA and FDA authorize the police to seize illicit drugs and anything they reasonably believe provides evidence of a drug offence.⁵³ Suspects and others with a property interest in a seized item may

apply for its return once it is no longer needed as evidence.⁵⁴ However, if the suspect is convicted, the money and drugs involved in the offence are forfeited to the government.⁵⁵ Moreover, under the NCA, if the suspect is convicted of trafficking, possession for trafficking, importing, or exporting, then any car, boat, or plane used in connection with the offence may also be forfeited.⁵⁶

Recent federal legislation has created two new offences related to the proceeds of drug offences. First, it is an offence under the NCA and FDA to possess property, or the proceeds of property, knowing it was obtained through the commission of any of the common drug offences, with the exception of simple possession.⁵⁷ Second, both Acts make it an offence to deal knowingly with such property or proceeds with the intent to conceal or convert the property or proceeds.⁵⁸ This offence is commonly referred to as money "laundering." Both new offences apply to property or proceeds obtained through drug offences, even if the offence was committed outside Canada.⁵⁹

(f) The Impact of Discretion

As in many other areas of the Canadian criminal justice system, the severity of the drug laws is lessened by police, prosecutorial, and judicial discretion. Those most likely to benefit from such discretion are young first offenders who are charged with less serious offences.

For example, a teenager found with a single joint may be taken home by the police to be dealt with by parents, rather than being charged. Similarly, possession charges may be brought against only one occupant of a car, even though the circumstances could support charging the other occupants. Even when charges are laid, prosecutors will often choose not to proceed with the full rigor that the law allows. Thus, a prosecutor may accept a guilty plea to possession even though the circumstances might support a conviction for trafficking. As well, judges rarely impose the maximum sentence or anything close to it, particularly in cannabis cases.⁶⁰

"'Literature for illicit drug use' means any printed matter or video that describes and is intended to 'promote, encourage, or advocate' the consumption of illicit drugs."

While the exercise of discretion may alleviate the severity of the law, it is not without its own problems. First, discretion is exercised on an individual basis by hundreds of officials in thousands of cases, and there are major inconsistencies in investigation, prosecution, and sentencing. Second, despite some general constraints imposed by local practice and administrative guidelines, those exercising discretion are not publicly accountable for their decisions. Third, suspects have no control over whether discretion will be exercised on their behalf. The fact that one suspect is given a warning does not preclude the full weight of the law being applied to another suspect in an identical situation. With the enactment of the Charter, however, the courts have become more critical of the exercise of such wide discretion.⁶¹ Increasingly, those involved in the administration of criminal justice are required to explain and justify the exercise of their discretionary powers.

(g) The Young Offenders Act

The Canadian criminal justice system treats "young offenders" differently from "adult" criminals. A young person from 12 to 17 who is charged with any federal

offence is prosecuted under the Young Offenders Act⁶² rather than the relevant statute, such as the Criminal Code or Narcotic Control Act, under which an adult would be prosecuted.

A young offender's trial takes place in a special Youth Court instead of an ordinary criminal court.⁶³ Although there are many similarities in the procedures, there are several important distinctions. For example, a young offender has the right to legal representation at public expense,⁶⁴ and the identity of a young offender cannot be published.⁶⁵ Particularly significant are the sentencing provisions available.⁶⁶ In general, a young offender will be treated far more leniently than an adult criminal. Indeed, the most severe sentence that can be imposed—even for murder—is a maximum of three years' imprisonment.⁶⁷

2 Provincial Alcohol Law

(a) Introduction

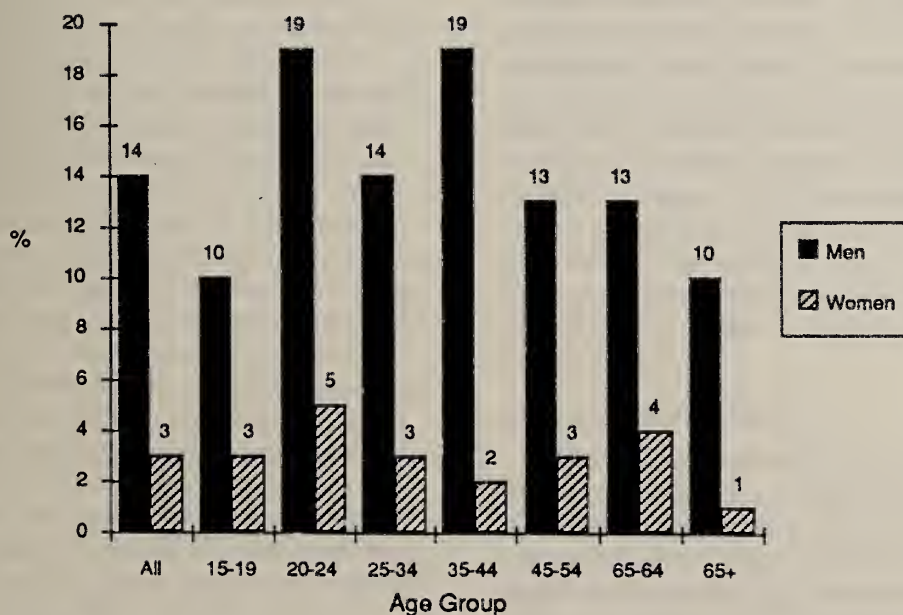
The sale, supply, and consumption of alcohol in Ontario is governed primarily by the Liquor Licence Act (LLA).⁶⁸ The LLA is a very stringent piece of legislation, containing broad prohibitions, detailed restrictions on licensed premises, extensive enforcement provisions, and potentially severe penalties. However, we will limit our discussion to those provisions of the LLA that are most relevant to young people, namely: the drinking age, the prohibition against providing alcohol to the intoxicated, the places where alcohol can be consumed, the prohibition

against public intoxication, transporting alcohol, police enforcement powers, and penalties.

(b) Underage Drinking

The LLA prohibits anyone under the age of 19 from drinking, having, purchasing, attempting to purchase, or obtaining alcohol.⁶⁹ Thus, any student under 19 who brings alcohol onto school property is violating the LLA. Those under age are also prohibited from entering certain types of licensed establishments.⁷⁰ A licence holder has a corresponding obligation to eject underage patrons.⁷¹ It is

HEAVY DRINKING* BY AGE AND SEX - 1985



* 15 or more drinks per week

From Health and Welfare Canada, *Active Health Report* (1989).

also an offence for anyone to sell or supply alcohol to a person who is known to be under age or who appears to be under age.⁷²

One major exception⁷³ to these rules is that parents or guardians may serve their own children alcohol at home or in another residence, even though the children are under age.⁷⁴ However, the exception is narrow. For example, parents may not give their 17-year-old son wine with dinner in a restaurant. Similarly, parents hosting a high school graduation party in their own home could give their son alcohol, but could not lawfully serve his underage friends.

In order to reduce the problems of identifying underage drinkers, the Ontario government established a system for issuing proof-of-age cards. A server who has reasonably relied upon a proof-of-age card cannot be held responsible for serving an underage patron.⁷⁵ It should be noted that using another person's card, using a false card, or attempting to obtain a card with false information constitutes an offence.⁷⁶

(c) Providing Alcohol to the Intoxicated

The LLA makes it an offence to sell or supply alcohol to "any person in or apparently in an intoxicated condition."⁷⁷ This prohibition is extremely broad, applying equally to a tavern owner who sells alcohol and to a homeowner who gives alcohol to guests. The legislation prohibits giving alcohol to those who appear intoxicated and to those who, while apparently sober, are in fact intoxicated. Unfortunately, neither the legislature nor the courts have provided a clear definition of the term "intoxicated."

It should also be noted that there has been a sharp rise in civil liability suits against alcohol providers and hosts of alcohol-related events for failing to control the conduct of the intoxicated.⁷⁸ This trend in civil liability has been most dramatic in Ontario, where there are now numerous suits in various stages of litigation. These suits have not been confined to commercial licensed establish-

ments,⁷⁹ but rather include universities,⁸⁰ government alcohol stores,⁸¹ service clubs,⁸² and private social hosts.⁸³

(d) Public Consumption

The LLA provides that alcohol may be consumed only in a residence or in a place that has a liquor licence or permit.⁸⁴ A residence is defined as any place that is used as a dwelling, such as houses, apartments, and dormitory rooms. The attached balconies, porches, and shared hallways are considered part of the residence if they are not normally open to the public. Motor homes, boats, and tents may be classified as residences, if they are equipped and occupied as dwellings.⁸⁵ Consequently, a student drinking in the school parking lot, a teacher drinking in the staff lounge, and guests drinking at a school wine and cheese party are all violating the LLA.

(e) Public Intoxication

The LLA prohibits being intoxicated in a public place or in part of a residence that is shared with other tenants, such as an elevator in an apartment building.⁸⁶ Despite some ambiguity in the LLA, this provision may apply to an intoxicated student on school grounds. The police are authorized to arrest without a warrant an intoxicated person found in public, if this is necessary to protect the suspect or a third party.⁸⁷ Rather than taking the suspect to the station, the police may deliver the suspect to a detoxification centre, where he or she may be detained until sober.⁸⁸ Furthermore, the Criminal Code makes it an offence to cause a disturbance in or near a public place by being drunk.⁸⁹

(f) Transporting Alcohol

Alcohol may be kept in open or unopened bottles in a residence or in a place that has a permit or licence.⁹⁰ In any other place, the alcohol must be in a closed container and the container must not be in public view.⁹¹ Consequently, it is illegal to carry even a closed bottle of liquor, beer, or wine in public, unless it is

"...there has been a sharp rise in civil liability suits against alcohol providers and hosts of alcohol-related events for failing to control the conduct of the intoxicated."

in a bag or is otherwise hidden from view. Alcohol may be carried in any part of a car or boat, provided the bottle has not been opened and is not in public view.⁹² If the bottle has been opened, it must be kept in closed baggage or stored so that it is not readily accessible to the driver or passengers.⁹³

(g) Enforcement Powers

The LLA grants the police extensive arrest, search, and seizure powers. An officer may arrest without a warrant persons found violating the Act, if they refuse to adequately identify themselves.⁹⁴ If the police have reasonable grounds to believe that alcohol is being illegally carried in a vehicle, they may search the vehicle and all its occupants without a warrant.⁹⁵ For example, if the police stop a car driven by an 18-year-old and notice a case of beer in the back seat, the driver could be charged with unlawful possession. Consequently, the officer could search the driver, any passengers, and the vehicle. If, during these searches, the police found illicit drugs or evidence of other criminal offences, additional charges could be laid. The LLA also authorizes the police to seize any alcohol that is involved in a violation of the Act.⁹⁶

(h) Penalties

The LLA provides that any violation of the Act or Regulations carries a maximum penalty of a \$10,000 fine and a

year's imprisonment.⁹⁷ In the case of a corporate offender, the maximum penalty is a \$25,000 fine.⁹⁸ The only minimum penalty is for the offence of providing alcohol to a person who is apparently under age. Licence holders are subject to a minimum fine of \$500 and a licence suspension of at least seven days; others cannot be fined less than \$100.⁹⁹

As a provincial statute, the LLA is governed by the procedural sections of the Provincial Offences Act (POA).¹⁰⁰ Under the POA, the police can choose whether to prosecute an offence by a simple "ticketing" procedure or a more formal court summons. For most LLA offences, the ticketing procedure is selected and results in dramatic decreases in the LLA's potentially severe penalties. A person convicted under this option faces only a maximum penalty of a \$300 fine.¹⁰¹ Moreover, there are "set" fines established by the Chief Judge of the Provincial Court for ticketed offences. Such an accused can admit guilt and accept the set penalty without having to attend court. However, an accused who disputes guilt and is convicted after a trial is still usually fined only the set amount. For example, even though the LLA permits underage drinkers to be fined \$10,000 and imprisoned, such offenders are routinely fined \$78.75 under the POA's ticketing procedures. A legislative Committee has recently recommended that this standard fine be increased.¹⁰²

"If the police have reasonable grounds to believe that alcohol is being illegally carried in a vehicle, they may search the vehicle and all its occupants without a warrant."

3 Federal and Provincial Tobacco Law

(a) Introduction

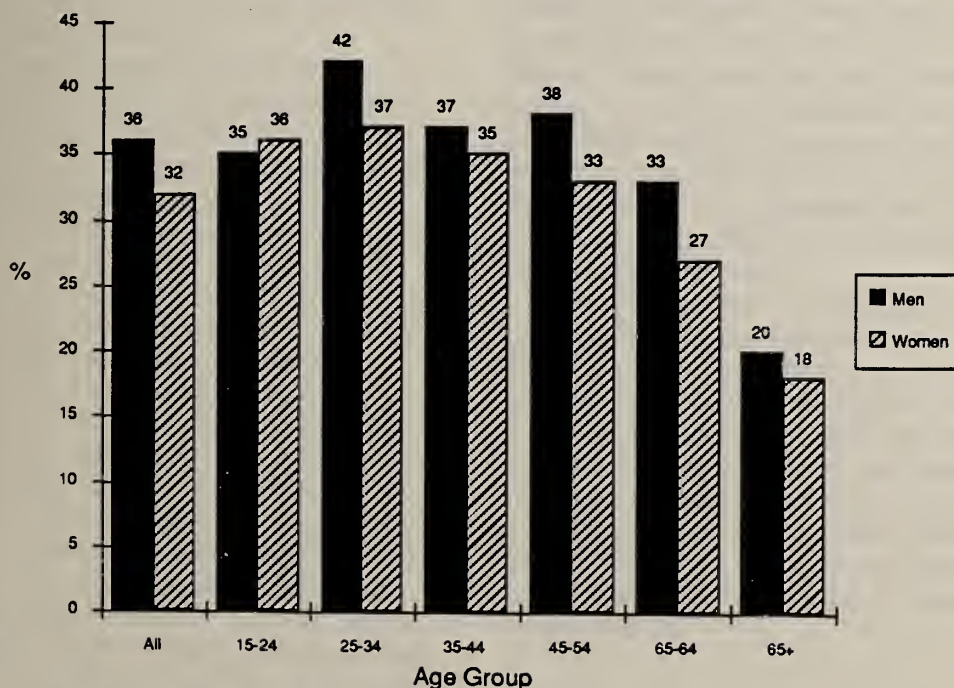
Tobacco legislation is seldom thought of when drug laws are discussed. Yet, for those under 16, tobacco is an "illicit drug." Federal and provincial laws make it an offence for young people to purchase or consume tobacco. The fact that these laws are often broken and rarely enforced makes this conduct no less illegal.

There is no doubt that tobacco is a drug, and its addictive qualities and harmful effects have been well documented.¹⁰³ Smoking is now widely acknowledged as "the greatest single preventable cause of disease, disability and death in our society"¹⁰⁴ and is esti-

mated to result in 35,000 deaths a year.¹⁰⁵ While the smoking rate for men fell from 56% to 36% between 1965 and 1985, the rate for women declined only from 33% to 32%.¹⁰⁶ Indeed, among young people aged 15 to 24, the smoking rate for women now slightly exceeds that for men.¹⁰⁷ Unfortunately, this pattern of use among women has been accompanied by a 300% increase in female lung cancer, from 1,700 cases in 1970 to 5,100 in 1989.¹⁰⁸

Despite increased awareness of the risks, a substantial portion of young people ignore the hazards and begin smoking in their early teens. For example, a recent study in Hamilton indicated that

CIGARETTE SMOKING BY AGE AND SEX - 1985



From Health and Welfare Canada, *Active Health Report* (1989).

over 30% of 15-year-olds are smokers.¹⁰⁹ Given the law and the staggering effects of smoking on health, educators should consider tobacco as a primary concern when formulating drug and alcohol policies.

(b) Federal Legislation

Parliament enacted the first criminal prohibition against tobacco in 1908. The Tobacco Restraint Act¹¹⁰ makes it a federal offence to give or sell cigarettes, tobacco, or cigarette papers to any person under 16.¹¹¹ An offender is liable to a maximum penalty of \$10 for a first offence, \$25 for a second offence, and \$100 for a third or subsequent offence.¹¹² The Act also makes it an offence for anyone under 16 to possess or purchase cigarettes, cigarette papers, or tobacco or to smoke or chew tobacco in a public place.¹¹³ The penalties for this offence are even more trivial—a reprimand for a first offence, up to a \$1 fine for a second offence, and a fine of up to \$4 for a third or subsequent offence.¹¹⁴

As is evident from the penalties, the legislation has not been changed since 1908. It is among the most infrequently enforced federal laws. Given the research on the harmful effects of smoking, the failure to enforce or strengthen the 1908 legislation is alarming.¹¹⁵

Increased public concern about smoking prompted Parliament to enact two statutes in June 1988. The Tobacco Products Control Act severely restricts the advertising and promotion of tobacco products¹¹⁶ and requires tobacco products to carry explicit health warnings.¹¹⁷ The Non-Smokers Health Act limits smoking in federal workplaces, ships, aircraft, and railway cars to "designated smoking rooms."¹¹⁸ As well, the Act adds tobacco¹¹⁹ to the list of products governed by the Hazardous Products Act,¹²⁰ thereby making the sale and importation of tobacco products subject to strict regulation or conceivably even a total ban.¹²¹ It remains to be seen whether these Acts, unlike the Tobacco Restraint Act, will be enforced. It should also be noted that the Tobacco Products Control Act has already

been challenged under the Charter.¹²²

(c) Provincial Legislation

The Ontario Minors' Protection Act prohibits the selling, giving, or furnishing of tobacco to anyone under 18.¹²³ This provision does not apply to a minor who purchases tobacco for his or her parent with the latter's written authority. Of course, any merchant who was confronted by such a note would have no easy way of knowing whether it was really written by the minor's parent. A person who violates the Act is subject to a fine of not less than \$2 and not more than \$50.¹²⁴

Like the federal Tobacco Restraint Act, the Minors' Protection Act (and similar legislation in other provinces) has been largely ignored by the government, police, and retail tobacco industry. For example, a study conducted in Alberta, British Columbia, and Ontario found that 117 of 127 stores sold cigarettes to children.¹²⁵

(d) Municipal By-Laws

The Ontario Municipal Act authorizes municipalities to enact by-laws prohibiting and abating public nuisances,¹²⁶ preserving the health of their inhabitants,¹²⁷ and regulating smoking in retail shops.¹²⁸ These provisions give municipalities the authority to regulate smoking in public places.¹²⁹ For example, the City of London has enacted a by-law creating "no smoking areas" in places open to the public, and requiring that signs be posted identifying these areas.¹³⁰

The Metropolitan Toronto Council has considered several initiatives to discourage the sale of cigarettes to minors. In the fall of 1987, the Council sent notices to approximately 7,000 retailers, advising them of the federal and provincial laws on sales to minors. Furthermore, a by-law has been proposed that would require retailers to post "point-of-sale signs" indicating that cigarettes cannot be sold to minors.¹³¹

"...a study conducted in Alberta, British Columbia, and Ontario found that 117 of 127 stores sold cigarettes to children."

4 Drinking and Driving Law

(a) Introduction

Drinking and driving is by far the largest single criminal cause of death in Canada.¹³² Recent studies indicate that almost half of all traffic fatalities involve someone who has been drinking, and that 25% to 30% of all drivers injured in accidents are impaired.¹³³ In 1987, those charged with federal drinking and driving offences accounted for more than 20% (128,055) of all individuals charged under the Criminal Code. Despite these alarming statistics, large numbers of people continue to drink and drive. In a 1985 survey, 16% of adults admitted driving while impaired at least once in the previous month.¹³⁴

The drinking and driving legislation should be of vital concern in formulating a school system's educational, treatment, and intervention policies. Despite the provincial age restrictions on drinking, it is generally accepted that a substantial number of high school students drink. As inexperienced drinkers and relatively new drivers, young people are particularly vulnerable to alcohol-related car accidents. Those between 16 and 24 represent 17% of the population, but account for 31% of traffic fatalities and 33% of traffic injuries.¹³⁵

Although a drinking and driving incident may involve various offences, including failing to remain at the scene of an accident¹³⁶ or dangerous driving,¹³⁷ there are four specific types of drinking and driving offences: operating or having care or control of a motor vehicle while one's ability to drive is impaired by alcohol or a drug,¹³⁸ impaired driving causing death or bodily harm,¹³⁹ operating or having care or control of a motor

vehicle with a blood alcohol level (BAL) over .08%,¹⁴⁰ and failing to provide a breath or blood sample for analysis.¹⁴¹ Many people wrongly assume that they have to be driving a car on a public road to be charged with these offences. While most cases arise in such circumstances, the offences are far broader in scope because of three aspects of the legislation.

(b) The Scope of Liability

First, since there is no geographical limit imposed on the offences, they can be committed anywhere.¹⁴² Motorists have been convicted when apprehended on a private driveway¹⁴³ or a parking lot.¹⁴⁴ Indeed, one driver was convicted when his car was found straddling railroad tracks, almost 70 metres from the highway.¹⁴⁵

Second, the offences apply to any "motor vehicle,"¹⁴⁶ which is defined broadly to include any vehicle, except a train, that is driven by any means other than muscle power.¹⁴⁷ This definition covers motorcycles, motorized bicycles, snowmobiles, golf carts, tractors, and even self-propelled lawnmowers and snowblowers.¹⁴⁸

Third, the federal offences apply not only to those who are driving, but also to those who merely have "care or control"¹⁴⁹ of a motor vehicle.¹⁵⁰ The definition of "care or control" has been left to the courts, and they have interpreted it broadly to include virtually any act involving a vehicle that could set it in motion, even accidentally.¹⁵¹ Motorists have been held to have had care or control when they used their vehicle as a place to sleep,¹⁵² were warming up the engine,¹⁵³ or were trying to extract their

"As inexperienced drinkers and relatively new drivers, young people are particularly vulnerable to alcohol-related car accidents."

car from a ditch with a jack.¹⁵⁴ It is clear that the intention to drive is not necessary.¹⁵⁵

A prosecutor's task of establishing that an accused had care or control of a vehicle is greatly simplified by s. 258(1)(a) of the Criminal Code. It provides that anyone found in the driver's seat will be deemed to have care or control, unless that person can prove that he or she did not enter the vehicle for the purpose of setting it in motion.¹⁵⁶

(c) Impaired Operation of a Motor Vehicle

Section 253(a) of the Criminal Code makes it an offence to operate or have care or control of a motor vehicle if one's ability to drive is impaired by alcohol or a drug. The key issue is whether the driver's ability is impaired, not whether he or she is driving in a careless or dangerous manner.¹⁵⁷ Similarly, the amount of alcohol or drugs consumed is irrelevant. The courts have adopted a broad definition of "impaired," which focuses on whether the driver had complete control of the vehicle.¹⁵⁸

A driver may be convicted if impaired by alcohol alone, drugs alone, or a combination of drugs and alcohol.¹⁵⁹ The courts have defined the word "drug" to include any substance, legal or illegal, that causes impairment. For example, a driver was convicted of impaired driving when he was found in a stupor caused by inhaling the fumes of airplane glue.¹⁶⁰

(d) Impaired Operation of a Vehicle Causing Death or Bodily Harm

Two new offences were introduced in 1985 to ensure that impaired drivers who cause serious accidents would be subject to a more serious charge than impaired driving.¹⁶¹ An impaired driver who kills or injures another person may now be charged with impaired driving causing death or impaired driving causing bodily harm.¹⁶²

(e) Operating a Motor Vehicle with a BAL over .08%

It is a criminal offence to drive or

have care or control of a motor vehicle with a BAL over .08%.¹⁶³ The fact that the car was being driven safely makes no difference. Similarly, it does not matter whether the driver appears sober, or whether his or her ability to drive is impaired.

The amount of alcohol that someone must consume to have a BAL in excess of .08% varies from person to person. It depends on such factors as weight, percentage of body fat, how quickly the alcohol was consumed, when the person last ate, and the speed with which the person metabolizes the alcohol—that is, processes the alcohol so that it loses its effect.¹⁶⁴

An individual's BAL can be determined by analysing samples of his or her urine, blood, or breath. Although the police now have the power to demand blood samples in limited circumstances, the overwhelming majority of cases involve the chemical analysis of breath samples.

The Criminal Code authorizes the police to use two different kinds of machines for analysing breath samples, namely "approved screening devices" and "approved instruments."¹⁶⁵ Perhaps the best-known approved screening device is the Alcohol Level Evaluation Roadside Tester (ALERT), and the best known approved instrument is the Breathalyzer.¹⁶⁶ If the police have complied with the Criminal Code's testing procedures, the Breathalyzer results are deemed, in the absence of evidence to the contrary, to be proof of the driver's BAL.¹⁶⁷

(f) Refusal to Provide a Breath or Blood Sample

It is a criminal offence to refuse an officer's demand for a breath or blood sample without a reasonable excuse.¹⁶⁸ The essential element of this offence is the failure to comply with the officer's demand. Provided the officer had the requisite grounds for making the demand, the driver cannot raise as an excuse that he or she was driving safely, was otherwise innocent of any wrongdoing, or

"The key issue is whether the driver's ability is impaired, not whether he or she is driving in a careless or dangerous manner."

had not consumed any alcohol.¹⁶⁹ As well, motorists can be convicted despite the fact that they were not warned that a refusal can result in criminal liability.¹⁷⁰

The police can demand breath samples in two situations. First, s. 254(2) of the Criminal Code empowers an officer to demand a breath sample for an ALERT test from any driver who the officer reasonably suspects has any alcohol in his or her body. This is not a difficult standard for the police to meet. The manner of driving, the odor of alcohol on the driver's breath, slurred speech, clumsiness in handing over documents, blood-shot eyes, and inappropriate responses to questions could all create a reasonable suspicion that the driver has consumed alcohol. The police need not believe that the driver is drunk, impaired, or committing any offence.

Second, s. 254(3)(a) authorizes the police to demand breath samples for analysis in a Breathalyser machine from any driver they have reasonable and probable grounds to believe is committing, or has committed within the last two hours, either the offence of impaired driving or driving with a BAL over .08%.¹⁷¹

(g) Penalties

As shown below, the federal drinking and driving offences carry potentially severe penalties, particularly for a second or subsequent offence. Moreover, as the chart at the end of this section illustrates, a federal drinking and driving offence may automatically trigger lengthy provincial licence suspensions.

Federal Drinking and Driving Law

| OFFENCES | FEDERAL PENALTIES |
|---|--|
| <p>Impaired driving</p> <p>Driving with a blood alcohol level exceeding .08%</p> <p>Failing to provide a breath or blood sample without a reasonable excuse</p> | <p>Minimum penalty:</p> <p>First offence: \$300 fine and 3 months' driving prohibition</p> <p>Second offence: 14 days' imprisonment and 6 months' driving prohibition</p> <p>Subsequent offence: 90 days' imprisonment and 1 year's driving prohibition</p> <p>Maximum penalty for first, second, or subsequent offences:</p> <p>Summary conviction: \$2,000 fine, 6 months' imprisonment, and 3 years' driving prohibition</p> <p>Indictment*: 5 years' imprisonment and 3 years' driving prohibition</p> |
| Impaired driving causing death | <p>Maximum penalty:*</p> <p>14 years' imprisonment and 10 years' driving prohibition</p> |
| Impaired driving causing bodily harm | <p>Maximum penalty:*</p> <p>10 years' imprisonment and 10 years' driving prohibition</p> |
| Driving while prohibited or suspended | <p>Maximum penalty:</p> <p>Summary conviction: \$2,000 fine, 6 months' imprisonment, and 3 years' driving prohibition</p> <p>Indictment*: 2 years' imprisonment and 3 years' driving prohibition.</p> |

* In addition to the penalties stated above, the court may impose a fine of any amount.

(h) Provincial Laws Relating to Drinking and Driving

The province plays a vital role in the apprehension, prosecution, and punishment of drinking drivers. The broad enforcement powers in the Ontario Highway Traffic Act (HTA)¹⁷² are critical to the investigation of drinking and driving offences. The HTA authorizes police to stop any vehicle at random to determine whether the driver has been drinking and to check the driver's licence, insurance, and ownership.¹⁷³ Even though the officer may have no reason to suspect that the driver has violated any law, the driver is required to stop when requested.¹⁷⁴

These powers to stop vehicles at random allow the police to screen large numbers of drivers. By observing and talking to the driver during this contact, an officer can determine if there is sufficient evidence to demand an ALERT test. As previously indicated, an officer needs only a reasonable suspicion that a driver has alcohol in his or her body to make such a demand.¹⁷⁵ If a driver registers a BAL of .05% or more on the ALERT test

(indicated by the machine showing "Warn" or "Fail"), the police may immediately suspend the driver's licence for 12 hours.¹⁷⁶ The police may similarly suspend the driver's licence if he or she refuses to supply breath or blood samples in response to the police demand to do so under s. 254 of the Criminal Code.¹⁷⁷ A driver who drives during this temporary suspension commits a provincial offence.¹⁷⁸

As the chart below illustrates, the HTA imposes lengthy licence suspensions on federal drinking and driving offenders. An offender, particularly one who needs a driver's licence to work, may find these provincial suspensions more burdensome than any other penalty imposed. Moreover, drinking and driving offenders may find that the automobile insurance consequences are more financially onerous than the fines imposed by the criminal courts. For example, following a first conviction for any federal drinking and driving offence, insurance companies routinely increase the offender's liability and collision premiums by 50% for three years.¹⁷⁹

Provincial Licence Suspensions for Federal Drinking/Driving Offences

| OFFENCES | PROVINCIAL CONSEQUENCES |
|--|---|
| Impaired driving Driving with a blood alcohol level exceeding .08% Failing to provide a breath or blood sample without a reasonable excuse Impaired driving causing death Impaired driving causing bodily harm | Minimum licence suspension: First federal offence: 1 year's licence suspension Second federal offence within a 5-year period: 2 years' licence suspension Subsequent federal offence within a 5-year period: 3 years' licence suspension Maximum licence suspension for any federal drinking and driving offence: an additional licence suspension of up to 3 years |
| Driving while prohibited or suspended | First federal offence:* 1 year's licence suspension Subsequent federal offence within 5 years:* 2 years' licence suspension |

* These suspensions begin only after all federal and other provincial licence suspensions have ended.

Glossary

accused - A person charged with having committed an offence.

acquit - To declare the accused not guilty at the end of a trial. Acquittal may mean only that the accused has not been proved guilty, rather than that he or she is "innocent."

by-law - A public rule made by a municipality to regulate matters within its authority. Often by-laws relate to the use or control of property within the municipality.

cannabis - A scientific name for the marijuana plant. Cannabis and its derivatives, such as hashish and "hash oil," are illegal drugs under the Narcotic Control Act.

Charter - The familiar short name for the Canadian Charter of Rights and Freedoms, which became part of Canada's Constitution in 1982. The Charter guarantees Canadians a number of rights and freedoms, such as freedom of religion, freedom of expression, the right not to be deprived of life, liberty, or security of the person except in accordance with the principles of fundamental justice, the right to be secure against unreasonable search or seizure, the right to counsel, and the right to equal protection and benefit of the law without discrimination. A federal or provincial law that infringes upon a Charter right or freedom is invalid unless the infringement can be shown to be justified in a free and democratic society.

civil liability - The obligation of one party, as admitted by that party or

as determined by a court, to pay money for the loss or damage suffered by another. For example, A would be civilly liable to B if A smashed B's car.

controlled drugs - A list of drugs, including amphetamines and barbiturates, set out in Schedule G of the Food and Drugs Act (FDA). These drugs have recognized medical uses and are available on prescription. Part III of the FDA contains several offences, such as trafficking, that may be committed in respect of controlled drugs. However, simple possession of a non-prescription controlled drug is not a criminal offence.

convict - To declare that an accused has been found guilty.

criminal record - An official record that a person has been found guilty of a federal criminal offence. Such offences include those under the Criminal Code, Narcotic Control Act, and Food and Drugs Act. The potential harmful consequences of a criminal record include being denied entry to a foreign country and limitations on future employment prospects, particularly if bonding or a security clearance is required.

legislation - Laws made by the federal Parliament or a provincial legislature.

licence - Under the Liquor Licence Act, a licence is the authorization granted to an establishment, such as a bar or restaurant, allowing alcohol to be served and consumed.

litigation - The process of having a dispute brought to a court of law for its decision.

narcotic - For legal purposes, the Narcotic Control Act classifies over 100 substances, including cannabis, opium, and coca, as "narcotics." Some forms of narcotic drugs are legally available on prescription for medical purposes; otherwise, it is a criminal offence even to possess a narcotic.

permit - Under the Liquor Licence Act, a permit is a special-occasion authorization allowing alcohol to be legally served and consumed during an event, such as a social event, held in unlicensed and non-residential premises. If the permit allows the sale of alcohol, it must be on a non-profit basis or for charitable or community purposes.

possession - In addition to its ordinary meaning, "possession" is given an extended definition by section 4(3) of the Criminal Code. The Code provision, which is also adopted by the Narcotic Control Act and the Food and Drugs Act, broadens "possession" to include situations where a person knowingly has something "in the actual possession or custody of another person, or has it in any place ... for the use or benefit of himself or of another." Furthermore, all members of a group are considered to have "possession" of something if one of them has possession "with the knowledge and consent of the rest."

prosecutor - A person, generally employed by the government, who conducts the court case against an accused.

provincial offence - An offence created by provincial law. Although a convicted offender may be fined, and sometimes even imprisoned, for violating a provincial law, the offender will not have a criminal record as a result.

restricted drugs - These are drugs, including LSD and DMT, listed in Schedule H of the Food and Drugs Act (FDA). They generally have no medical use. Possession of a controlled drug is one of the criminal offences created by Part IV of the FDA.

search and seizure - A "search" is an examination made of someone's person or property in order to find evidence, and "seizure" is the taking of any evidence found.

statute - A written set of related laws on a particular subject, made by Parliament or the legislature of a province; also called an Act.

trafficking - Depending on the drug involved, it is a criminal offence under either the Narcotic Control Act (NCA) or the Food and Drugs Act to traffic in an illicit drug. Various ways of dealing with drugs are included within the broad meaning of the technical term "traffic." However, as described in the main text, that term is defined differently in the two Acts. Under the NCA, merely giving or offering to give a narcotic without legal authorization constitutes trafficking.

warrant - A document issued by a judicial officer authorizing someone, usually a police officer, to carry out a particular procedure in respect of a specified place or person; e.g., a search warrant, an arrest warrant.

Endnotes

1. Although this age group constitutes only 17% of Canada's population, it accounts for 31% of all traffic fatalities and 33% of all traffic injuries. "From the Ivory Tower: A Research Update: Youth, Alcohol, and Traffic Accidents," *Cross-roads*, 1(3), September 1987, p. 4. See also Ontario, Registrar General, *Vital Statistics for 1985* (1986), pp. 106-111; and Ontario, Ministry of Natural Resources, Office of Recreational Boating, *Recreational Boating Fatalities in Ontario 1980-87* (1989), pp. 55-57.
 2. It is very difficult to be more precise because no single source provides a cumulative total. See P. Erickson, *Cannabis Criminals*, Toronto: Addiction Research Foundation, 1980, pp. 20-21; Canada, Bureau of Dangerous Drugs, *Drug Users and Conviction Statistics, 1981*, Ottawa: Department of National Health and Welfare, 1982, Table 3, pp. 13-14; Canada, Bureau of Dangerous Drugs, *Narcotic, Controlled and Restricted Drug Statistics, 1985*, Ottawa: Department of National Health and Welfare, 1986, Table 3; and Statistics Canada (1988), 8(2) *Juristat Service Bulletin*, Minister of Supply and Services Canada, pp. 4 and 9.
 3. Canada, Bureau of Dangerous Drugs, *Drug Users and Conviction Statistics, 1981*, Ottawa: Department of National Health and Welfare, 1982, Table 50, pp. 141-149; Canada, Bureau of Dangerous Drugs, *Narcotic, Controlled and Restricted Drug Statistics, 1985*, Ottawa: Department of National Health and Welfare, 1986, Table 13; and H. Johnson, "Illegal Drug Use In Canada," *Canadian Social Trends*, Winter 1988, p. 8.
 4. R. Gilbert, "Municipal Actions: II," Addiction Research Foundation of Ontario, *The Journal*, January 1, 1988, p. 8. See also, B. Lee, "One-third of 15-year-olds smoke," Addiction Research Foundation of Ontario, *The Journal*, April 1, 1989, p. 2.
 5. K. Barry et al., *Alcohol and Drug Policies: A Guide for School Boards*, Toronto: Addiction Research Foundation, 1988.
 6. R. Solomon, L. Hewitt, and M. Basso, *The Legal Rights, Powers, and Obligations of Educators Regarding Student Alcohol and Drug Use*, Toronto: Addiction Research Foundation, 1988.
 7. Part I of the *Constitution Act, 1982*, being Schedule B of *Canada Act, 1982* (U.K.), 1982, c. 11.
 8. R.S.C. 1985, c. N-1.
 9. R.S.C. 1985, c. F-27.
 10. R.S.C. 1985, c. C-46.
 11. *Interpretation Act*, R.S.C. 1985, c. I-21, s. 34(2).
 12. B. McFarlane, *Drug Offences in Canada*, 2nd ed., Toronto: Canada Law Book, 1986, p. 719.
 13. Canada, Bureau of Dangerous Drugs, *Narcotic, Controlled and Restricted Drug Statistics, 1985*, Ottawa: Department of National Health and Welfare, 1986, Table 6.
 14. *Ibid.*, Table 5. See also Canada, Bureau of Dangerous Drugs, *Drug Users and Conviction Statistics, 1981*, Ottawa: Department of National Health and Welfare, 1982, Table 9, pp. 28-29; and P. Erickson, *Cannabis Criminals*, Toronto: Addiction Research Foundation, 1980, pp. 20-21.
- It appears that cannabis convictions have decreased slightly as a percentage of the total NCA convictions since 1984. Statistics Canada (1988), 8(2) *Juristat Service Bulletin*, Minister of Supply and Services Canada, pp. 10-11. It is difficult to be more definitive because Statistics Canada deleted cannabis offences from its annual statistical summary as of 1986.

15. See note 2.
16. Although a number of these drugs, such as cannabis, cocaine, and phencyclidine (PCP), are not pharmacologically classified as narcotics, each drug in the Schedule is considered a narcotic for legal purposes.
17. NCA, s. 3.
18. NCA, s. 2, "possession"; and *Criminal Code*, s. 4(3).
19. *Beaver v. The Queen* (1957), 118 C.C.C. 129 (S.C.C.).
20. See *R. v. Quigley* (1954), 111 C.C.C. 81 (Alta. C.A.); *R. v. McLeod* (1955), 111 C.C.C. 137 (B.C.C.A.); and *R. v. Babiak and Stefaniuk* (1974), 21 C.C.C. (2d) 464 (Man. C.A.). However, there has been greater reluctance to convict a suspect of possession in cases involving microscopic quantities that are not visible to the naked eye or capable of normal physical handling. See B. McFarlane, *Drug Offences in Canada*, pp. 550-562.
21. *R. v. Guiney* (1961), 130 C.C.C. 407 (B.C.C.A.); and *R. v. Miller* (1984), 12 C.C.C. (3d) 54 (B.C.C.A.).
22. *R. v. Martin* (1948), 92 C.C.C. 257 (Ont. C.A.); *R. v. Tokarek*, [1967] 3 C.C.C. 114 (B.C.C.A.); *Fuller v. The Queen* (1973), 14 C.C.C. (2d) 433 (S.C.C.); and *R. v. Smith* (1973), 10 C.C.C. (2d) 384 (B.C.C.A.).
23. *Criminal Code*, s. 4(3)(a)(i).
24. *Ibid.*, s. 4(3)(a)(ii).
25. *Ibid.*, s. 4(3)(b).
26. *R. v. Marshall*, [1969] 3 C.C.C. 149 (Alta. C.A.); and *R. v. Terrence* (1983), 4 C.C.C. (3d) 193 (S.C.C.).
27. NCA, s. 4(1).
28. NCA, s. 2, "traffic."
29. See *R. v. Petrie*, [1947] O.W.N. 601 (C.A.); *R. v. Sherman* (1977), 36 C.C.C. (2d) 207 (B.C.C.A.).
30. *R. v. Young*, [1971] 3 W.W.R. 195 (B.C.C.A.).
31. NCA, s. 4(2).
32. *R. v. Denholm* (1973), 13 C.C.C. (2d) 313 (Sask. C.A.); and *R. v. Barsikhian* (No. 1) (1984), 12 W.C.B. 153 (Que. C.A.).
33. *R. v. Blais* (1974), 19 C.C.C. (2d) 262 (Man. Q.B.); *R. v. Douglas* (1977), 33 C.C.C. (2d) 395 (Ont. C.A.); and *R. v. Miller* (1984), 12 C.C.C. (3d) 54 (B.C.C.A.).
34. NCA, s. 6.
35. *R. v. Busby* (1972), 7 C.C.C. (2d) 234 (Y.T.C.A.); *R. v. Munce* (1974), 15 C.C.C. (2d) 326 (Ont. Co. Ct.); and *R. v. Gauvreau* (1983), 35 O.R. (2d) 388 (C.A.). It is not essential that the seeds germinate or that the plant emerge above the surface of the soil. *R. v. Fahlman* (1968), 5 C.R.N.S. 192 (B.C. Co. Ct.), affirmed on other grounds [1970] 2 C.C.C. 273 (C.A.). Nor does the suspect have to be caught actually tending the plants. Thus, a suspect may be convicted if the police find fertilizer, seeds, potting soil, grow lamps, and growing marijuana plants in the suspect's possession. *R. v. Busby* (1972), 7 C.C.C. (2d) 234 (Y.T.C.A.).
36. NCA, s. 5. This offence is treated as one of the most serious crimes in Canadian law and provides a minimum sentence of seven years. Except for murder and high treason, no other *Criminal Code* offence imposes a heavier mandatory minimum sentence. However, the Supreme Court of Canada struck down the seven-year minimum sentence because it violated the *Charter*. *Smith v. The Queen* (1987), 40 D.L.R. (4th) 435 (S.C.C.). The Court stated that not all mandatory minimum sentences were necessarily violations of the *Charter*. Indeed, it was suggested that a seven-year minimum sentence may be appropriate in cases involving large-scale smugglers, hard drugs, or repeat offenders. The current provision violated the *Charter* because it was too broad in scope, in that it applied regardless of the narcotic, the record of the offender, or the quantity of drugs involved.
37. *R. v. Blondin* (1970), 2 C.C.C. (2d) 118 (B.C.C.A.), affirmed on other grounds (1971), 4 C.C.C. (2d) 566 (S.C.C.); and *R. v. Duffy* (1973), 11 C.C.C. (2d) 519 (Ont. C.A.).
38. NCA, s. 3.1.
39. Part III adopts the *Criminal Code*'s broad definition of "possession," discussed earlier under (b) The Narcotic Control Act.
40. FDA, s. 39.

41. Like the NCA, the FDA has been amended to include the offence of prescription shopping. It is now an offence to seek a controlled drug from one doctor without disclosing that a controlled drug was obtained from another doctor during the previous 30 days. FDA, s. 38.1.
42. *Ibid.*, s. 38, "traffic".
43. FDA, s. 47.
44. FDA, s. 48(1).
45. FDA, s. 48(2).
46. *Criminal Code*, s. 462.2.
47. *Ibid.*, s. 462.1.
48. *Ibid.*
49. *Ibid.*
50. See S. Usprich and R. Solomon, "Comment on Bill C-264," Addiction Research Foundation of Ontario, *The Journal*, March 1, 1989, p. 7.
51. The Charter, s. 2(b).
52. For a general discussion of drug enforcement powers see R. Solomon, "The Noble Pursuit of Evil: Arrest, Search and Seizure in Canadian Drug Law," in J. Blackwell and P. Erickson (eds.), *Illicit Drugs in Canada: A Risky Business*, Scarborough, Ontario: Nelson Canada, 1988, p. 263.
53. NCA, s. 11 and FDA, ss. 42(2), 51(1). Both Acts give an officer the power in conducting searches to "break open any door, window, lock, fastener, floor, wall, ceiling, compartment, plumbing fixture, box, container or any other thing." See NCA, s. 14, and FDA, s. 42(5).
54. NCA, s. 15(1), and FDA, s. 43(1).
55. NCA, s. 16(1), and FDA, s. 44.
56. NCA, s. 16(2).
57. NCA, s. 19.1 and FDA, ss. 44.2, 50.2.
58. NCA, s. 19.2; FDA, ss. 44.3, 50.3.
59. *Ibid.*
60. See Canada, Bureau of Dangerous Drugs, *Drug Users and Convictions Statistics*, 1981, Table 12, pp. 35-38; and Canada, Bureau of Dangerous Drugs, *Narcotic, Controlled and Restricted Drug Statistics*, 1985, Table 12.
61. For examples, see *Reference re s. 94(2) of the Motor Vehicle Act*, [1985] 2 S.C.R. 486; *R. v. Ladouceur* (1987), 59 O.R. (2d) 688 (C.A.); *R. v. Hufsky*, [1988] 1 S.C.R. 621; *R. v. Hamilton* (1986), 30 C.C.C. (3d) 357 (Ont. C.A.), leave to appeal dismissed (1988), 76 N.R. 320 (S.C.C.); and *Smith v. The Queen* (1987), 40 D.L.R. (4th) 435 (S.C.C.).
62. R.S.C. 1985, c. Y-1.
63. *Ibid.*, s. 5(1). However, in some circumstances, a serious offence committed by a youth 14 or more may be transferred to an ordinary adult criminal court. See s. 16.
64. *Ibid.*, s. 11.
65. *Ibid.*, s. 38.
66. See *ibid.*, s. 20.
67. *Ibid.*, s. 20(1)(k)(ii).
68. R.S.O. 1980, c. 244.
69. LLA, s. 44(3).
70. *Ibid.*, s. 44(5) and (6).
71. *Ibid.*, s. 47(1).
72. *Ibid.*, s. 44(1) and (2).
73. Another exception is that 18-year-olds are allowed to enter licensed premises and possess alcohol if it is part of their job in the licensed establishment. LLA, 44(4) and (6).
74. *Ibid.*, s. 44(7).
75. *Ibid.*, s. 44(8).
76. *Ibid.*, s. 52(3) and (4).
77. *Ibid.*, s. 43.
78. See R. Solomon, "Canadian Dram Shop Liability Law," in J. Mosher (ed.), *Liquor Liability Law*, New York: Matthew Bender Co. Inc., 1987, pp. 20-1 to 20-48.
79. See, for example, *Jordan House Hotel Ltd. v. Menow and Honsberger* (1973), 38 D.L.R. (3d) 105 (S.C.C.); *Schmidt v. Sharpe and the Arlington House Hotel* (1983), 27 C.C.L.T. 1 (Ont. S.C.); *Lemaire v. Lambert*, [1983] C.S. 291 (Que. Sup. Ct.); and *Stanton v. Twack* (1982), unreported (B.C. S.C.).
80. Discussions with Ontario university officials indicate that there are at least five suits pending. An incident at Lansdowne Stadium in the fall of 1987 illustrates the kinds of situations that may generate suits against universities. See "Student antics cited in Ottawa accident," *Globe and Mail*, October 19, 1987, A4.
81. See C. Martin, "LCBO sued for liquor sale after drunk driver kills man," *Ontario*

- Lawyers Weekly*, May 24, 1985. This case was recently settled for an undisclosed amount of money.
82. See, for example, *Picka v. Porter and The Royal Canadian Legion* (1980), unreported (Ont. C.A.); and *Jacobson v. Kinsmen Club of Nanaimo* (1976), 71 D.L.R. (3d) 227 (B.C.S.C.).
 83. Discussions with Ontario lawyers indicate that there have been several settlements involving private social hosts. In the only reported case, the claims against the hosts were dismissed on the basis that they had not provided any alcohol. However, the judge indicated that the legal principles governing commercial providers and hosts were the same. See *Baumeister and Baumeister v. Drake* (1986), 5 B.C.L.R. (2d) 382 (S.C.).
 84. *LLA*, s. 45(2).
 85. *Ibid.*, s. 45(1)(b).
 86. *Ibid.*, s. 45(4).
 87. *Ibid.*, s. 45(5).
 88. *Ibid.*, s. 36. A judge hearing a public intoxication case may order the offender detained for up to 90 days in a treatment centre, if the judge believes that the offender would benefit from treatment. *Ibid.*, s. 37. This provision might be challenged under the *Charter* as a breach of s. 12, which guarantees protection from cruel and unusual treatment or punishment, or s. 7, which guarantees the right not to be deprived of liberty "except in accordance with the principles of fundamental justice."
 89. *Criminal Code*, ss. 175(1)(a). This offence carries a maximum penalty of a \$2,000 fine and six months' imprisonment.
 90. *LLA*, s. 45(3).
 91. *Ibid.*, s. 45(3).
 92. *Ibid.*, s. 48(1)(a).
 93. *Ibid.*, s. 48(1)(b).
 94. *Ibid.*, s. 54.
 95. *Ibid.*, s. 48(2). At least some of these broad search powers might be successfully challenged under s. 8 of the *Charter*, which prohibits unreasonable search and seizure. See *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145.
 96. *LLA*, s. 56.
 97. *Ibid.*, s. 55(1).
 98. *Ibid.*, s. 55(5).
 99. *Ibid.*, s. 55(1), (2) and (4).
 100. R.S.O. 1980, c. 400.
 101. *Ibid.*, s. 12(1).
 102. Ontario, *Report of the Advisory Committee on Liquor Regulation* (Chairman, Mr. S. Offer, M.P.P.), Ministry of Consumer and Commercial Relations, February 1987, p. 65.
 103. E. Brecher, *Licit and Illicit Drugs*, Toronto: Little, Brown and Company, 1972, pp. 214-240; K. Warner, *Selling Smoke: Cigarette Advertising and Public Health*, Washington: American Public Health Association, 1986, pp. 6-20; "Silver Bullets on Smoking," Addiction Research Foundation of Ontario, *The Journal*, April 1, 1989, p. 8.
 104. Task Force on Smoking, *Smoking and Health in Ontario: A Need For Balance*, Toronto: Ontario Council of Health, 1982, p. 1.
 105. Canada, Health and Welfare, *Active Health Report*, Ottawa: Minister of Supply and Services Canada, 1989, p. 7.
 106. *Ibid.*, p. 8.
 107. *Ibid.*, 36% for women to 35% for men.
 108. See "Lung cancer in women rises dramatically," *London Free Press*, May 8, 1989, p. A1.
 109. See B. Lee, "One-third of 15 year olds smoke," Addiction Research Foundation of Ontario, *The Journal*, April 1, 1989, p. 2.
 110. R.S.C. 1985, c. T-12.
 111. *Ibid.*, s. 2.
 112. *Ibid.*
 113. *Ibid.*, s. 4(1).
 114. *Ibid.*
 115. See, for example, R. Gilbert, "Municipal Actions: II," Addiction Research Foundation of Ontario, *The Journal*, January 1, 1988, p. 8:
...almost nothing has been done about...controlling sales to children...A quarter of Canadian children are dependent on nicotine when they enter adulthood. Their chemical dependence, acquired when they are not fully responsible for their actions, is life-threatening and difficult to escape from.
 116. S.C. 1988, c. 20, ss. 4-7.
 117. *Ibid.*, s. 9.

118. S.C. 1988, c. 21, s. 3(1) and (2).
119. *Ibid.*, s. 9.
120. R.S.C. 1985, c. H-3.
121. *Ibid.*, s. 4.
122. The Act's advertising restrictions have been challenged as a violation of s. 2(b) of the Charter, which guarantees freedom of expression, including freedom of the press and other media communications.
123. R.S.O. 1980, c. 292, s. 1.
124. *Ibid.*, s. 2(1).
125. R. Gilbert, "Municipal Actions: II," Addiction Research Foundation of Ontario, *The Journal*, January 1, 1988, p. 8. See also B. Lee, "One-third of 15 year olds smoke," Addiction Research Foundation of Ontario, *The Journal*, April 1, 1989, p. 2.
126. R.S.O. 1980, c. 302, s. 210, para. 134.
127. *Ibid.*, s. 104.
128. *Ibid.*, s. 210, para. 27.
129. In *Harrison v. City of Toronto* (1982), 19 M.P.L.R. 310 (Ont. H.C.), the court upheld this type of by-law as a valid exercise of the City's authority to safeguard health. It is not clear whether these provisions of the *Municipal Act* would authorize a municipality to regulate smoking in private workplaces. In March 1988, the City of Toronto enacted a by-law (*City of Toronto Workplace By-Law*, No. 23-88) requiring all employers, with the exceptions of the provincial and federal governments, to establish a smoking policy agreeable to both smokers and non-smokers. If an agreement cannot be reached, then smoking must be banned in that workplace. However, in order to pass the by-law, the City of Toronto sought special enabling legislation.
130. *Smoking Control By-Law*, By-Law No. P.H. 62-474, February 1, 1986. Proprietors have a duty to enforce the by-law. Although a failure to do so constitutes an offence punishable by a maximum fine of \$2,000, the prosecution of offenders is left to private individuals. See ss. 14(1)-(3) and 24-25 of the by-law.
131. R. Gilbert, "Municipal Actions: II," Addiction Research of Ontario, *The Journal*, January 1, 1988, p. 8.
132. Health and Welfare Canada estimated that in 1980 almost 2,700 people—the equivalent of more than 7 a day—were killed in alcohol-related car accidents. Working Group on Alcohol Statistics, *Alcohol in Canada: A National Perspective* (2d ed., 1984), National Health and Welfare Canada, p. 46.
133. Statistics Canada (1988), 8(4) *Juristat Service Bulletin*, Minister of Supply and Services Canada, p. 1.
Alcohol-related traffic fatalities appear to have decreased since 1980, but unfortunately there are no recent national statistics. See Statistics Canada (1989), 9(5) *Juristat Service Bulletin*, Minister of Supply and Services Canada, p. 6.
134. Statistics Canada, (1988), 8(4) *Juristat Service Bulletin*, Minister of Supply and Services Canada, p. 10. See also Health and Welfare Canada, *National Survey on Drinking and Driving 1988: Overview Report*, Minister of Health and Welfare, 1989, p. 10.
135. "From the Ivory Tower: A Research Update: Youth, Alcohol, and Traffic Accidents," *Crossroads*, 1(3), September 1987, p. 4. This age group also has the highest rates of alcohol consumption. Health and Welfare Canada, *National Survey on Drinking and Driving 1988: Overview Report*, Minister of Health and Welfare, 1989, p. 1.
136. *Criminal Code*, s. 252(1).
137. *Ibid.*, s. 249(1)(a).
138. *Ibid.*, s. 253(a).
139. *Ibid.*, s. 255(3) and (2).
140. *Ibid.*, s. 253(b).
141. *Ibid.*, s. 254(5).
142. See *R. v. Jones* (1961), 35 C.R. 306 (Alta. C.A.).
143. *R. v. MacKay* (1949), 95 C.C.C. 97 (Ont. H.C.J.); and *R. v. Shea*, [1970] 4 C.C.C. 175 (P.E.I. S.C.).
144. *R. v. Mann*, [1968] 3 C.C.C. 122 (P.E.I. S.C.).
145. *R. v. Kirk*, [1974] 1 W.W.R. 752 (Sask. Dist. Ct.).
146. The *Criminal Code* also makes these offences applicable to "vessels" or "aircraft."
147. *Criminal Code*, s. 2, "motor vehicle."

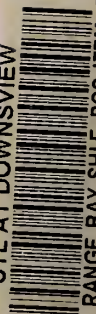
148. See, for example, *R. v. Vaillancourt*, (September 22, 1969), unreported (Ont. Dist. Ct.); and *R. v. Swarychewski* (1957), 26 C.R. 176 (Man. C.A.).
149. Although we often simply use the term "driver" when discussing the federal offences in this paper, that term should be understood as including anyone who has "care or control" of a vehicle.
150. *Criminal Code*, s. 253.
151. In *Ford v. The Queen* (1982), 65 C.C.C. (2d) 392 (S.C.C.), Dickson, J. stated at page 399:

Care or control may be exercised without such intent [to set the car in motion] where an accused performs some act or series of acts involving the use of the car, its fittings or equipment, such as occurred in this case, whereby the vehicle may unintentionally be set in motion creating the danger the section is designed to prevent.
152. See *R. v. Penno* (1984), 28 M.V.R. 97 (Sask. Q.B.); *R. v. Johnson* (1985), 37 M.V.R. 122 (Sask. Q.B.); and *R. v. Darbyson* (1985), 39 M.V.R. 236 (B.C. Co. Ct.). But see *R. v. McNeilly* (1986), 1 Y.R. 178 (Y. Terr. Ct.).
153. *R. v. Vickers* (1982), 39 N.B.R. (2d) 579 (Q.B.).
154. *R. v. Linegar* (1977), 13 Nfld. & P.E.I.R. 311 (Nfld. Prov. Ct.).
155. *Ford v. The Queen* (1982), 65 C.C.C. (2d) 392 (S.C.C.).
156. In *R. v. Whyte* (1988), 42 C.C.C. (3d) 97, the Supreme Court of Canada upheld the constitutional validity of this provision. The unsuccessful challenge had argued that the provision violated an accused's *Charter* right "to be presumed innocent until proven guilty" (s. 11(d)).
157. *Hurley v. Taylor* (1953), 107 C.C.C. 220 (Nfld. S.C.); and *R. v. Brissette* (1966), 57 W.W.R. 1 (B.C. S.C.).
158. See *R. v. Carlson* (1956), 116 C.C.C. 234 (Alta. Dist. Ct.); and *R. v. Zarins* (1959), 125 C.C.C. 375 (Ont. C.A.). The police usually rely on their own observations in deciding whether to lay an impaired driving charge. The manner in which the car is driven, the odor of alcohol on the driver's breath, slurred speech, dilated pupils, lack of coordination while producing a driver's licence or getting out of the vehicle, clumsiness in walking, slow or inappropriate responses to questions, and similar factors may all provide the officer with evidence of the driver's impairment. See *R. v. Brissette* (1966), 57 W.W.R. 1 (B.C. S.C.); and *R. v. Majore* (1980), 60 C.C.C. (2d) 277 (Ont. Prov. Ct.).
- The police will often ask a suspect to take a series of coordination tests, such as walking a straight line or standing upright with eyes closed. Drivers are not required to perform these tests, but if they do the results can be introduced in evidence to establish their impairment. *R. v. Shaw* (1964), 43 C.R. 388 (B.C. C.A.).
159. *R. v. Bennett* (1959), 126 C.C.C. 366, (B.C.S.C.); and *R. v. MacAulay* (1975), 25 C.C.C. (2d) 1 (N.B.C.A.).
160. *R. v. Marionchuk* (1978), 4 C.R. (3d) 178 (Sask. C.A.).
161. *Criminal Law Amendment Act*, S.C. 1985, c. 19, s. 36.
162. *Criminal Code*, s. 255(3) and (2).
163. *Ibid.*, s. 253(b).
164. In general, it takes an average male weighing 70 kilograms (154 lb.) a little more than one hour to metabolize the alcohol in a "standard drink." This term is used to refer to a twelve-ounce regular beer, one and one-half ounces of liquor, or five ounces of wine, each of which contains the same amount of alcohol. To the extent that they have proportionately more body fat, women will have a higher BAL than men of the same weight, given the same amount to drink. See generally H. Fisher, R. Simpson, and B. Kapur, "Calculation of Blood Alcohol Concentration (BAC) by Sex, Weight, Number of Drinks and Time," *Canadian Journal of Public Health* 78 (1987), p. 300.
165. These terms are defined in s. 254(1) of the *Criminal Code*. The federal Attorney General has established which commercially available machines qualify as "approved screening devices" and "approved instruments." See *Approved Screening Devices Order*, SI/85-200; and *Approved Breath Analysis Instruments Order*, SI/85-201.
166. For simplicity we use "ALERT" to refer to all approved screening devices and "Breathalyzer" to refer to all approved instruments. The actual type of machines used may differ in various jurisdictions.

167. *Criminal Code*, s. 258 (1)(c).
168. *Ibid.*, s. 254(5).
169. *Taraschuk v. The Queen* (1975), 25 C.C.C. (2d) 108 (S.C.C.).
170. *R. v. MacLennan* (1973), 13 C.C.C. (2d) 217 (N.S. C.A.); and *R. v. Marando* (1981), 9 M.V.R. 277 (Alta. Q.B.).
171. The police may demand blood samples from a driver if they have grounds for a Breathalyzer demand and reasonably believe that the person is physically incapable of providing a breath sample or that it is impractical to obtain one. *Criminal Code*, s. 254(3)(b). The blood sample can be taken only by or under the supervision of a doctor who is satisfied that the procedure will not endanger the driver's life or health. *Ibid.*, s. 254(4). It is not an offence for a doctor or technician to refuse to take the blood sample. *Ibid.*, s. 257. This provision was prompted by concern that some intoxicated drivers who were incapable of providing breath samples were escaping criminal liability.

If a driver has been involved in an accident that has resulted in death or bodily harm and is unable to consent to the demand for a blood sample, the police can apply for a special search warrant that authorizes the taking of a blood sample. *Criminal Code*, s. 256(1). The application for this warrant can be made in person or by telephone pursuant to the s. 487.1 " telewarrant " provisions.
172. R.S.O. 1980, c. 198, as amended.
173. *HTA*, ss. 30a and 189a. The Supreme Court of Canada has recently rejected a challenge that claimed these sections violated the *Charter*. *R. v. Hufsky* (1988), 40 C.C.C. (3d) 398.
174. A driver who fails to do so is committing a provincial offence. *HTA*, s. 189a(2). The minimum penalty is a \$100 fine and the maximum is a \$2,000 fine and six months' imprisonment.
175. *Criminal Code*, s. 254(2). This is not a difficult standard for the police to meet. The way in which the car is being driven, the odor of alcohol on the driver's breath, slurred speech, clumsiness in handing over the documents, bloodshot eyes, and inappropriate responses to questions could all create a reasonable suspicion that the driver has alcohol in his or her body.
176. *HTA*, s. 30a (2), (3) and (5).
177. *Ibid.*, s. 30a(4) and (5)
178. *Ibid.*, s. 35(1). The minimum penalty for a first offence is a \$250 fine, and the maximum is a \$2,000 fine and six months' imprisonment. In addition, a conviction automatically results in a six-month licence suspension, which only begins once the other suspensions have ended.
179. A second conviction within three years usually results in an additional 100% increase. As well, there are severe limitations on the insurance company's liability if the insured driver caused an accident while committing a drinking/driving offence or while under a federal driving prohibition or a provincial licence suspension. Such drivers could then be financially responsible for enormous sums.

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